

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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KRISTIN DAVIS,

Plaintiff,

v.

23-CV-116 (JLS) (JJM)

STATE OF NEW YORK, OFFICE OF  
MENTAL HEALTH (BUFFALO  
PSYCHIATRIC CENTER) and ANN  
MARIE T. SULLIVAN, M.D.  
COMMISSIONER OF THE STATE OF  
NEW YORK OFFICE OF MENTAL  
HEALTH, in her official capacity,

Defendants.

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### DECISION AND ORDER

Kristin Davis initiated this action to pursue claims under the Americans with Disabilities Act, 42 U.S.C. sections 12101–12213 (“ADA”), and the Rehabilitation Act of 1973, 29 U.S.C. sections 701–796. *See* Dkt. 1 (Complaint); Dkt. 12 (Amended Complaint). Defendants moved to dismiss. Dkt. 14. Presently before the Court is Judge McCarthy’s Report and Recommendation (“R&R”),<sup>1</sup> recommending that this Court grant Defendants’ motion. *See* Dkt. 20, at 11. Davis objected to the R&R, Dkt. 21, and Defendants responded, Dkt. 22.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court

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<sup>1</sup> This Court referred the case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 7.

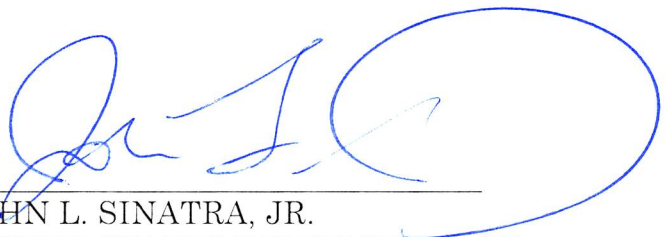
must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. section 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. Based on its *de novo* review, the Court accepts Judge McCarthy's recommendation. For the reasons stated above and in the R&R, Defendant's motion to dismiss (Dkt. 14) is GRANTED.

This Court also GRANTS Davis leave to amend her complaint. Any amended complaint is due by March 29, 2024. The case is referred back to Judge McCarthy for further proceedings consistent with the June 28, 2023 referral order (Dkt. 7).

SO ORDERED.

Dated: March 8, 2024  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE